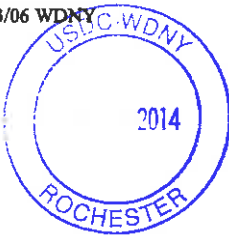


Revised 03/06 WDNV



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)**

1406216 S

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

**1. CAPTION OF ACTION**

**A. Full Name And Prisoner Number of Plaintiff:** *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. JARVIS EIDER, DIN: 09B0562

2. \_\_\_\_\_

-VS-

**B. Full Name(s) of Defendant(s)** *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. J. MCCARTHY, Sergeant

4. ALBERT PRACK, Dir. of special Housing

2. T. MACINTYRE Correction Officer

5. MARK L. BRADT, SUPERINTENDENT

3. KEN. KLING, Hearing officer / Voc. Supr.

6. \_\_\_\_\_

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: JARVIS EIDER, DIN: 09B0562

Present Place of Confinement & Address: GreatMeadow Correctional Facility,  
Box 51, Comstock, New York 12821

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: J. McCARTHY

(If applicable) Official Position of Defendant: Sergeant

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: ATTICA CORRECTIONAL FACILITY, P.O. BOX 149,  
ATTICA, NEW YORK, 14011-0149

Name of Defendant: T. MACINTYRE

(If applicable) Official Position of Defendant: Correction officer

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: ATTICA CORRECTIONAL FACILITY, P.O. BOX 149,  
ATTICA, NEW YORK, 14011-0149

Name of Defendant: KEN, KLING

(If applicable) Official Position of Defendant: Vocational Supervisor

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: ATTICA CORRECTIONAL FACILITY, P.O. BOX 149,  
ATTICA, NEW YORK, 14011-0149

#### 4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): JARVIS EIDER

Defendant(s): SUPERINTENDENT MARK L. BRANT, et al

2. Court (if federal court, name the district; if state court, name the county): UNITED STATES

DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

3. Docket or Index Number: 13-CV-6373

4. Name of Judge to whom case was assigned: CHARLES J. SIRAGUSA

5. The approximate date the action was filed: 10/23/12

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☒

If not, give the approximate date it was resolved. 1/8/14

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☒ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. District Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

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### **5. STATEMENT OF CLAIM**

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

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### **Exhaustion of Administrative Remedies**

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

DEFENDANT'S INFORMATION SUPPLEMENT SHEET

Name of Defendant: ALBERT PRACK

Official Position of Defendant: Director of special housing  
Defendant is sued in ✓ individual and/or ✓ official capacity

Address of Defendant: Department of corrections and community supervision  
The Harriman State Campus - Building 2  
1220 Washington Avenue, Albany, N.Y. 12226-2050

Name of Defendant: MARK L. BRADT

Official Position of Defendant; Superintendent

Defendant is Sued in ✓ individual and/or ✓ official capacity

Address of Defendant: ATTICA CORRECTIONAL FACILITY, P.O. BOX 149, ATTICA  
N.Y. 14011-0149

A. FIRST CLAIM: On(date of the incident) I was Keeplock on 9/1/12 for a fire that was set to my cell while I was at chow in the after, Inmate : Housed in A-Block/1 company/ cell-23. I was moved to C-block/34 company/cell-16 on 9/16/12 and was issued a Misbehavior report on 9/10/12 for the following rules 116.10 stealing and 116.12 forgery.

Defendant's(give the name and position of each defendant involved in this action: SERGEANT, J. MCCARTHY author of the Misbehavior Report.

Did the following to me(Briefly state what each defendant name above did):

1. SERGEANT, J. MCCARTHY at ATTICA CORRECTIONAL FACILITY, (herein DOCCS) Wrote a Misbehavior report on 9/10/12 and I was served a copy of that Misbehavior report by C.O. Rogers on 9/11/12 at 10:00 a.m. in C=block /34-company/cell-16.
2. The Misbehavior Report state: on the above date and time, I Sergeant MCCARTHY issued this misbehavior report on Inmate ELDER 09B0562 due to an investigation I recieved on 9/4/12 of Inmate Lawrence 97A7376 who locks in A-1-20 cell pertaining to possible disbursement forgies against his account. The same day I discovered that Inmate ELDER 09B9562 who locked in A-1-23 cell, cell was set on fire by an unknown Inmate on 9/1/12 during the afternoon chow run.
3. On 9/4/12 I also recieved reliable confidential information that Inmate Lawrence is involved in possible drug actvity as well the arson of Inmate ELDER cell. I ordered a cell frisk on Inmate Lawrence cell A-1 -20 and various Items of contraband were found including an address list, phone list, a completed 2706 Disbursement form with envelope, all these Items mention belong to Inmate ELDER 09B0562 and were confiscated and added to my investigation packet.
- 4; On 9/5/12 I interviewed Inmate ELDER about the fire and showed ELDER the three Items that were confiscated from Inmate Lawrence cell and asked him if they are his. Inmate ELDER stated that all three Items his. I then asked if he filled out and signed the 2706 form with

his name on it, ELDER stated "yes".

55. It should be noted that the hand writing on Inmate ELDER personal 2706 matches all of the 2706 forms with Inmate Lawrence name numbers on it that are in question in the investigation, therefore it is my belief that Inmate ELDER forged all the 2706 forms Inmate Lawrence's name on it totaling \$630.00, all evidence was bagged, tagged and placed in the contraband office by myself, SGT. McCARTHY. this investigation is still on going. SEE EXHIBIT A.
6. The Plaintiff received a NOTICE OF ENTRY from the SUPREME COURT of the STATE OF NEW YORK, APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT dated 3/21/14 ordered that the determination is unanimously annulled the law with out cost.
7. Quoting, there is no indication in the Misbehavior Report that SERGEANT showed the other Inmate the disbursement forms or that the other Inmate claimed that it was not his signature on the forms. SEE. EXHIBIT G.

THE CONSTITUTIONAL BASIS FOR THIS CLAIM UNDER 42 U.S.C § 1983 is:

8. Under those procedures, when an Inmate violates an Inmate rule, the alleged incident of misbehavior must be report in a written, specific and particularized summary (7NYCRR 251-3.1 [c][1]).
9. SERGEANT McCARTHY misbehavior report is inaccurate. It list facts concerning two separate incidents, it neither ties those incidents together to the Plaintiff nor particularizes the misbehavior report to support the violation charged. The misbehavior report is vague and not in conformance with (D.O.C.C.S) standards, (7NYCRR 251-3.1 (a)(b)(c)(4)).
10. The Plaintiff was confined on 9/1/12 for a incident that happen to me and was issued a misbehavior report on 9/10/12. The Plaintiff on 9/14/12 objected to the violation at the Tier 3 hearing conducted KEN. KLING hearing officer at 1.37 P.M. SEE EXHIBIT C. TRNSCRIPTS PAGE 3.

11. The Plaintiff on 9/21/12 question SGT. McCARTHY credibility about the misbehavior report he wrote on me from 9/10/12 at the hearing, I ask him do he have a degree or qualify as a hand writing specialist as a correctional officer, his response was no. I ask the SGT McCARTHY is it policy for correctional officers to ask for name and din numbers of the Inmate prior to giving out mail, legal mail and taking. his response was yes. I ask the SGT. McCARTHY prior to his investigation from 9/4/12 til 9.10.12 the issues a misbehavior report of Inmate ELDER I would like to know that can any of these officers that took a disbursement form from Inmate ELDER with Inmate lawrence name and numbers on it. His response was he wouldn't be able to tell. SEE. EXHIBIT C. Transcripts pages 8-9.
12. I was found guilty on 9/21/12 because of this misbehavior report, the penalty imposed to the Plaintiff was loss of packages, phones, rec. 6 months in S.H.U and \$630.00 restitution.
13. This Defendant violated My Eighth Amendment for cruel and unusual punishment and fourteenth Amendment Due Process.

THE DEFENDANT VIOLATED MY CONSTITUTIONAL RIGHTS:(state the relief sought: The Plaintiff would like to be Compensated 100 Dollars a day for wrongfull confinement for the 6 months spent in S.H.U. in the total sum of \$18,000,00. Praying for judgement against this defendant.

EXHAUSTION OF YOUR ADMINISTRATIVE REMEDIES FOR THIS CLAIM

Did you grieve or appeal this claim ☒ yes \_\_\_ no If yes, what was the result?

I appeal this issue to Albert Prack Director of Special Housing and was AFFIRMED on 12/6/12 SEE. EXHIBIT D.

Did you appeal that decision? ☒ yes \_\_\_ no If yes, what was the result?

I commenced a CPLR ARTICLE 78 in Wyoming County Supreme Court on 2/5/13 granted Petitioner's application, returnable on 4/4/13, before a special term of that Court. THE ARTICLE 78 proceeding transferred, pursuant to CLPR 7804 (g) by the Wyoming County Supreme Court (DADD, T.A.J.S.C) dated june 10,2013 and entered on June 18, 2013. SEE EXHIBIT E.



This ARTICLE 78 was returnable on 1/13/14, before a special term of the Court at Supreme Court of the State of NEW YORK APPLATE DIVISION, FOURTH DEPARTMENT.

MEMORANDUM AND ORDER by that Court, the Petition is granted and respondent is directed to expunge from Petitioner's institutional record all references to the violation of Inmate rules 116.10 (7NYCRR 270.2 [B] [17][i] and 116.12 (7NYCRR 270.2 [b][17][iii]).SEE EXHIBIT F AND G.

A. SECOND CLAIM: On (date of the incident) 9/13/12, time 11:30 A.M.

Defendant(give the name and position held of each Defendant involved in this incident) CORRECTIONS OFFICER T.MACTNTYRE, employee assistant for misbehavior report.

Did the following to me (Briefly state what each defendant name above did):

1. C.O. T.MACYNTYRE at ATTICA CORRECTIONAL FACILITY, (herein DOCCS) Came to my cell on 9/13/12 to conduct employee assistance for a misbehavior report that was written on me 9/10/12. I told C.O. that I am requesting for the following information: the officers who signed the Disbursement forms at the hearing, hand writing specialist, directive on chapter v, SGT.MCCARTHY to be at the hearing and Inmate Lawrence and forgery directive. SEE. EXHIBIT B. page 1,2.
2. C.O. T. MACTNTYRE left my cell and was gone no more than 20 minutes, as He came back to my cell again, He told me that Inmate Lawrence refused to testified.
3. I said, " did this Inmate say why" C.O. T. MACTNTYRE said he does not want to testify, I said, that not a good enough reason for his response.
4. I ask C.O. T. MACTNTYRE were are the disbursement forms I was accused of signing, his response was I can get that in the hearing, I said, I am entitled to this paper work so I can prepare my defense on my part.
5. The plaintiff asked for chapter v. also so I can read about the rules of atier 3 hearing proceeding, his response was there is no directive on

forgery and chapter v. The plaintiff said you are not getting the necessary documents for me I asked for, This employee assistant never question the officers I requested for neither. I sign the employee assssistant form then He walked off.

6. The plaintiff started my tier 3 hearing on September 14,2012 held by KEN. KLING at 1:37p.m. and I objected to my employee assistant. SEE EXHIBIT C. Transcripts 2,4-5.
7. The plaintiff was still found guilty on 9/21/12 from not having the documents I asked for from my employee assistant and the penalty imposed was loss packages, phones, commissary, recreation, 6 months in S.H.U. and \$630.00 restitution.

THE CONSITITUTION BASIS FOR THIS CLAIM UNDER 42 U.S.C. 1983 is:  
C.O. T. MACINTRYE is in violation of employee assistant (7NYCRR 251-4.1,4.2). Therefore this ia adirect violation of the plaintiff Eighth Amendent and Fourteenth Amendent.

THE RELIEF I AM SEEKING FOR THIS CLAIM IS (Briefly state the relief sought): This defendant violated my constitutional rights and the plaintiff would like to be compensated 100 doalars a day for Wrongful confinement, for the 6 months spent in S.H.U. in the total sum of \$18,000.00. Praying for judgement against this defendant.

EXHAUSTION OF YOUR ADMINISTRATIVE REMEDIESFOR THIS CLAIM

Did you grieve or appeal this claim ✓ yes \_\_\_ no if yes, what was the result? I appeal this issue to ALBERT PRACK Director of special housing and was Affired on 12/6/12.

Did you appeal that decision ✓ yes \_\_\_ no if yes. what was the result I commenced a CPLR ARTICLE 78 in Wyoming Cpunty Supreme Court on 2/5/13 granted Petitioners application. Returnable on 4/4/13, before a special term of that Court...

This Article 78 proceeding transferred, pursuant to CLPR 7804(G) by order of the Wyoming County Supreme Court (DADD, T.A.J.S.C.) dated june 10,2013 and entered on june 18,2013.

This Article 78 was returnable on 1/13/14, before a special term of the Court at Supreme Court of the STATE OF NEW YORK APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT.

MEMORANDUM AND ORDERED by that Court, the petition is granted and respondent is directed to expunge from petitioner's institutional record all references to the violation of inmate rules 116.10 ( 7NYCRR 270.2 [B][17][i] and 116.12 (7NYCRR 270.2 [B][17][iii].

- A. THIRD CLAIM: on (date of the incident) 9/14/12 and 9/21/12, tier 3 hearing dates.

Defendant (give the name and position held of each defendant in this defendant) KEN. KLING, Hearing Officer.

Did the following to me(Briefly state what each defendant name above did):

1. Hearing Officer KEN. KLING, at ATTICA CORRECTIONAL FACILITY (herein DOCCS). Conducted this hearing, the plaintiff voiced his procedural objection through this proceeding.
2. The plaintiff inquired to the hearing offficer about why inmate lawrence 97A7376 didn't want to testify, the hearing officer response was I will ask him he said on the form that all he wrote does not want to testify.
3. The plaintiff said, in this case he is the issue they filed against me and that is the reason I wanted to bring him here. The hearing officer response was I can't force him to testify if He refused to I don't have that authirity. SEE EXHIBIT C. Transcripts pages 2.

4. The plaintiff objected to the Misbehavior report written on me 9/10/12, about me being confined since 9/1/12 from a fire to my cell with no ticket and now just got served 9/10/12 for a ticket on forgery and stealing. SEE. EXHIBIT C. Transcripts pages 3-4.
5. The plaintiff inquired about the witness I wanted at the hearing Inmate Lawrence, Sergeant McCARTHY, Officer who signed the disbursement forms. The plaintiff told the hearing officer how to locate these witness who signed these disbursement forms by Identify them by there signatures on these forms. Hearing officer response was I looked and I am going to be honest with I can't tell by. SEE. EXHIBIT C. transcripts pages 4,5.
6. The plaintiff voiced certain documents I never got copies of that I am entitled to far as evidence, because my employee assistant didn't bring none of this evidence to me. I said this He threw me off my assstant he didn't want to help me or nothing like that so I have no copy of what I am accused of the dates and times. All I have is the Misbehavior and I am entitled to see the evidence that is accused against me, Hearing Adjourned. SEE. EXHIBIT C. Transcripts pages 5.
- 7, The plaintiff voiced on 9/21/12 when the hearing reconvened about evidence I can't present to produce and my cell was("f" up) and did not steal nothing. SEE. EXHIBIT C. Transcripts pages 7,8.
8. The plaintiff called Sergeant McCARTHY to the hearing as a witness and asked him several question far as does qualify as a hand writing specialist, his response was no.
9. The plaintiff asked the Sergeant is it policy to check a inmate names numbers before giving out, legal mail and taking, his response was yes. I ask him prior to his investigation from 9/4/12 til 9/10/12 can any of these officers can say they took disbursement forms me his response was He wouldn't be able tell and He can't answer for those officers.

10. The plaintiff asked SGT. McCARTHY so there is no relieable proof saying that an officer is safe to safe that they took these disbursement forms from me, his response is I will just tell you strait out no because since there not being identified about the disbursement form we can't ask them. SEE. EXHIBIT C. Transcripts pages 7-9.
11. The plaintiff voiced my opinion about why my information was found in this inmate cell that I object to and witness that I never looked into the evidence that I was accused of. SEE. EXHIBIT C. Transcripts pages 10-12.
12. The plaintiff was found guilty of all charges, the penalty imposed was 6 months on each of the following S.H.U., recreation, packages, and commissary and restitution \$630.00 because hearing officer relied upon is verbal testimony given by SGT. McCARTHY who author the misbehavior report. SEE. EXHIBIT C Transcripts pages 12-13.

THE CONSTITUTION BASIS FOR THIS CLAIM UNDER 42 U.S.C 1983 IS :

The hearing officer KEN. KLING violated administrative proceedings at a hearing the inmate may call witness on his behalf and may reply orally to the charge (7NYCRR 254.5 (a)(b)(c), 254.6 [a][3] (7NYCRR 251-4.1, 4.2) (7NYCRR 251-3.1 [c][1]. Denial of witnesses, Documents and misbehavior was not support by substancial evidence. Therefore this direct violation of the plaintiff Fourteenth Amendment

THE RELIEF I AM SEEKING FOR THIS CLAIM IS ( BRIFLY STATE THE RELIEF SOUGHT):

This defendant violated my constitutional rights and the plaintiff would like to be compensated \$100.00 a day for wrongful confinement for the 6 months in spent inS.H.U. in the total sum \$18,000.00 praying for a judegment against this defendant.

EXHAUSTION OF YOUR ADMINISTRATIVE REMEDIES FOR THIS CLAIM

Did you grieve or appeal this claim ☒ yes \_\_\_ no If yes, what was the

result? I appeal this issues to Albert Prack director special housing and was AFFIRMED on 12/6/12.

Did you appeal that decision \_\_\_yes\_\_\_no If yes,what was the result? I commenced a CPLR ARTICLE 78 in Wyoming County Supreme Court on 2/5/13 granted petitioner's application returnable on 4/4/13, before a special term of that court.

This Article 78 proceeding transferred, pursuant to Cpl'r 7804(g) by order of the Wyoming County Supreme Court (DADD,T.A.J.S.C.) dated June 10,2013 and entered on June 18,2013.

This Article 78 was returnable on 1/13/14, before a special term of the Court at Supreme Court of the State Of New York Appellate Division Fourth Department.

MEMORANDUM AND ORDER by that Court, the Petition is granted and respondent's is directed to expunge from Petitioner's institutional record all references to the violation of inmate rules 116.10 (7NYCRR 270.2 [B][17][i] and 116.12 (7NYCRR 270.2 [B][17][iii] SEE. EXHIBIT F and G.

A.. FOURTH CLAIM: on (date of the incident) 9/26/12 Requesting for Discretionary Review.

Defendant(give the name and position held of each defendant involved in this action) MARK L. BRADT SUPERINTENDANT, ATTICA CORRECTIONAL FACILITY, P.O. BOX 149, ATTICA, NEW YORK 14011-0149.

Did the following to me( briefly state what each defendant name above did):

1. The plaintiff wrote to Superintendent Mark L. Bradt, requesting for discretionary review on 9/22/12 pertaining to my procedural rights have been violated.
2. The plaintiff said my employee assistant didn't bring me certain documents I requested for chapter V., disbursement I am accused of forging, didn't talk to any of the officers that signed the disbursement forms.

3. The hearing officer didn't make an inquiry while the inmate refused to testify and the officers I requested for the hearing, the misbehavior report is not in compliance with (D.O.C.C.S. standards.
4. This proceeding is in violation with ( 7NYCRR 251-4.1,4.2) (7NYCRR 251-3.1[c][1] (7NYCRR 254.5,254.6[a][3]. can you please look into this matter. SEE. EXHIBIT H.
5. The plaintiff received a Memorandum from Attica Correctional Facility office of the Superintendent, MARK L. BRADT pertaining to my Discretionary review Dated 9/26/12. In response from the Superintendent after review, I find no reason to modify the disposition rendered. SEE. EXHIBIT H.

THE CONSTITUTIONAL BASIS FOR THIS CLAIM UNDER 42 U.S.C 1983 is:

Superintendent MARK L. BRADT is in violation of (7NYCRR 254.9 Discretionary review by Superintendent, the plaintiff address issues of misconduct that violation my procedural due process rights. This Defendant violated my FOURTEENTH ADMENDMENT.

The relief I am seeking for this claim is (Briefly state the sought)

This defendant violated my constitutional rights and the plaintiff would like to be compensated \$100.00 dollars a day for wrongful confinement, for the 6 months spent in S.H.U. in the total sum \$18,000.00 Praying for a judgement against this defendant.

EXHAUSTION OF YOUR ADMINISTRATIVE REMEDIES FOR THIS CLAIM:

Did you grieve or appeal this claim ✓yes \_\_\_no If yes, what was the result? I appeal this issue to Albert Prack director of special housing and was AFFIRMED on 12/6/12.

Did you appeal that decision? ✓yes \_\_\_no If yes, what was the result? I commenced a CLPR ARTICLE 78 in Wyoming County Supreme Court on 2/5/13 granted petitioners application, returnable on 4/4/13, before a special term of that Court.

This ARTICLE 78 proceeding, transferred, pursuant to CPLR 7804(g) by order of the Wyoming County Supreme Court (DADD, T.A.J.S.C.) dated June 10,2013 and entered on June 18,2013.

This ARTICLE 78 was returnable on 1/13/14, before a special term of the Court at Supreme Court of the State of New York Appellate Division Fourth Judicail Department.

MEMORANDUM AND ORDER by that Court, the petition is granted and respondent is directed to expunge from petiyioner's institutional record all refences to the violation of inmate 116.10(7NYCRR 270.2 [B][17][i] and (7NYCRR 270.2 [B][17][iii].

A. FIFTH CLAIM: on (date of the incident) 12/6/12 AFFIRMED DECISION.

Defendant(give the name and position held of each defenant involved in this incident) ALBERT PRACK Director of special hpusing Inmate Disciplinary Program.

Did the following to me (Briefly state what each defendant name above did):

1. ALbERT PRACK At Department of Correctional and Community Supervision The Harriman Campus- Building 2, Albany, N.Y. 12226-2050 (hereinafter D.O.C.C.S.).
2. The plaintiff submitted a Administrative appeal, recieved on 11/16/12 Dept. of Correctional services.
3. The plaintiff addressed the following issues, I objected to Tier 3 assistant because I was never brought the directive of timeliness for chapter 5 and 6 title 7 of New York Codes rules and Regulation (7NYCRR) I was not happy with his assistant.



4. I was never given or able to witness the documents that they accused me of forging, so I was deprived of preparing my defense.
5. I was denied the request of hearing the officers present that signed the 2706 disbursement forms they were never located or questioned about the disbursement forms they signed off on.
6. The witness refused to testify and the case was dealing with him, there was no statement declaring that those disbursement forms came me.
7. This Defendant AFFIRMED this Decision on 12/6/12 from the Tier 3 hearing on 9/21/12 SEE. EXHIBIT D.

CONSTITUTIONAL BASIS FOR THIS CLAIM UNDER 42 U.S.C. 1983 is:

This defendant violated (7NYCRR 254.8 of chapter v. appeal procedures When the plaintiff address the following procedural violation had occurred in my disciplinary hearing from 9/14/12,9/21/12. Denial of witness, documents and misbehavior report is not supported by substantial evidence. Which is in violation of my FOURTEENTH AMENDMENT

THE RELIEF I AM SEEKING FOR THIS CLAIM IS (BRIEFLY STATE THE RELIEF SOUGHT):

This defendant violated my constitutional rights and the plaintiff would like to be compensated \$100.00 dollars a day for wrongfull confinement spent 6 months in S.H.U in the total sum \$18,000.00. Praying for a judegment against this defendant.

EXHAUSTION OF YOUR ADMINISTRATIVE REMEDIES FOR THIS CLAIM

Did grieve or appeal this claim ✓ yes \_\_\_ no If yes, what was the result? I commenced a CLPR ARTICLE 78 in Wyoming County Supreme Court on 2/5/13 granted petitioner's application, returnable on 4/4/13, before a special term of that Court.

This Article 78 proceeding transferred, pursuant to CLPR 7804(g) By order of the Wyoming County Supreme Court (DADD, T.A.J.S.C.) dated June 10, 2013 and June 18, 2013.

This Article 78 was returnable on 1/13/14, before a special term of the Court at Supreme Court of the State of New York Appellate Division, Fourth Judicial Department.

MEMORANDUM AND ORDER by that Court, the petition is granted and respondent is directed to expunge from petitioner's institutional record all references to the violation of inmate rules 116.10( &NYCRR 270.2[B][17][i] and 116.12(7NYCRR270.2[B][17][iii].

RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above Each of these defendants violated my constitution rights and requesting \$100.00 Dollars a day for the 6 months spent in S.H.U in the total sum \$18,000.00. from each defendant, Praying for judgement against each defendant.

Do you want a jury trial? yes ✓ no

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on 4/24/14  
(date)

**NOTE:** *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

James Elder - Pro-se  
JAMES ELDER #09B1562

\_\_\_\_\_  
Signature(s) of Plaintiff(s)

**EXHIBIT A**

FORM 2171A (4/01)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

Correctional Facility

T

## INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NUM.	HOUSING LOCATION ♦ CELDA
ELDER TARVIS	09B0562	34-16
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE	INCIDENT DATE ♦ FECHA	INCIDENT TIME ♦ HORA
A-block 1 company	9/10/12	1230 PM
3. RULE VIOLATION(S) ♦ VIOLACIÓN(ES)		
116.12 FORGERY, 116.10 STEALING		
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE		
<p>On the above date and time, I Sgt. McCarthy issued this misbehavior report on Inmate Elder 09B0562 due to an investigation I received on 9/4/12 of Inmate Lawrence 97A7376 who locked in A-1-20 cell pertaining to possible disturbance forgeries against his account. The same day I discovered that Inmate Elder 09B0562 who locked in A-1-23 cell, cell was set on fire by an unknown inmate on 9/1/12 during the afternoon chow run.</p> <p>On 9/4/12 I also received reliable confidential information that Inmate Lawrence is involved in possible drug activity as well as the arson of Inmate Elder's cell. I ordered a cell search on Inmate Lawrence's cell A-1-20 and various items of contraband were found including an address list, phone list, a completed 2706 Disturbance Form with envelope, all three items mentioned belong to Inmate Elder 09B0562 and are confiscated and added to my investigation packet.</p>		
REPORT DATE ♦ FECHA	REPORTED BY ♦ REPORTADO POR LA PERSONA QUE HACE EL REPORTE	TITLE ♦ TÍTULO
9-10-12	Sgt. McCarthy	Sgt.
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) SIGNATURES		
FIRMAS		
2. 3.		

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	IF YES, GIVE NAME & #
		Lawrence 97A7376
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	OR
AS A RESULT OF THIS INCIDENT WAS INMATE CONFINED/RESTRICTED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF YES, (a) CURRENT HOUSING UNIT		(b) AUTHORIZED BY
E-35		
9. WAS PHYSICAL FORCE USED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> (IF YES, FILE FORM 2104)		
AREA SUPERVISOR ENDORSEMENT		

Dist: WHITE - Disciplinary Office CANARY - Inmate (After review)

FORM 2170 (2/01)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

Attica

Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO  
SUPPLEMENTARY SHEET ♦ HOJA SUPLEMENTARIA

1 NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NUM.	HOUSING LOCATION ♦ CELLA
ELDER, HARVEY	09130562	34-16

On 9/5/12 I interviewed Inmate Elder about the fire and showed Elder the three items that were confiscated from Lawrence's cell and asked him if they are his. Inmate Elder stated that all three items are his. I then asked if he filled out and signed the 2706 form with his name on it, Elder stated "yes".

It should be noted that the hand writing on Inmate Elder's personal 2706 form matches all of the 2706 forms with Inmate Lawrence's name and number on it that are in question in the investigation, therefore it is my belief that Inmate Elder forged all the 2706 forms with Inmate Lawrence's name on it totaling \$630.00, all evidence was bagged, tagged and placed in the contraband office by myself, Sgt McCarthy. This investigation is still on going.

7-10-12 S. MCCARTHY  
REPORT DATE ♦ FECHA REPORTE BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME

[Signature]  
SIGNATURE ♦ FIRMA

Sgt  
TITLE ♦ TITULO

ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any)  
ENDOSOS DE OTROS EMPLEADOS (si hay)

[Signature]  
SIGNATURE ♦ FIRMA

[Signature]  
TITLE ♦ TITULO

2  
SIGNATURE ♦ FIRMA

TITLE ♦ TITULO

**EXHIBIT B**

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES  
ATTICA CORRECTIONAL FACILITY

## ASSISTANT FORM

COMPLETE BY 9/11/12 NOON  
RETURN FORM TO T-3 OFFICETO: E. NOLAN / F. MACINTYRE / R. WORTHINGTON

FROM: DISCIPLINE OFFICE

You have been selected to assist inmate: ELDER 09B0562 34-16  
Name Din LocationIn a pending Tier 3 for a misbehavior report dated: 9-10-12

Pursuant to Section 251-4.2 of Chapter V, your role is to ensure that the inmate understands the charges, interview potential witnesses identified by the inmate, and report the results of your efforts to the inmate. You may also be requested to obtain relevant documentary evidence to assist in the preparation of the inmate's defense to the charges.

TO BE COMPLETED BY ASSISTANT:

I initially met with this inmate on 9/13/12 at Approx. 11<sup>30</sup> am  
Date Time

He has requested the following inmates to be interviewed as potential witnesses:

NAME	DIN	LOCATION	AGREES TO TESTIFY
<u>Lawrence</u>	<u>9747376</u>	<u>1-208</u>	YES _____ NO <u>X</u>
_____	_____	_____	YES _____ NO _____
_____	_____	_____	YES _____ NO _____
_____	_____	_____	YES _____ NO _____

He has requested the following other persons to be interviewed as potential witnesses:

---



---



---

## OTHER REQUESTS

## ACTION TAKEN

PLEASE CHECK U.I. BOOK IF U.I. IS REQUESTED BY INMATE

Requests Sgt. McCarthy to be present @ Hearing

Hand writing specialist

Directive on felony forgery - NO Directive

Officers who signed the Disciplinary forms present @ Hearing

TO BE COMPLETED AT CONCLUSION OF ASSISTANCE

I have interviewed witnesses and assisted as requested and reported the results to the inmate charged.

Assistant's signature [Signature] date: 9/13/12 time: Approx 1<sup>00</sup> pmPrint Assistant Name: T MACINTYREInmate's signature [Signature] date: 9/13/12 time: Approx 1<sup>00</sup> pm  
Inmate refused, witnessed by \_\_\_\_\_ date: \_\_\_\_\_ time: \_\_\_\_\_



JAM 2178.A (7/25)

## STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

CORRECTIONAL FACILITY

REQUESTED INMATE WITNESS REFUSAL TO TESTIFY  
IN TIER II/TIER III DISCIPLINARY HEARING

I, Lawrence, R 97A7376 hereby refuse to testify  
on behalf of ELDER 0930567 in his/her Tier II/  
Tier III hearing for a misbehavior report of 9/10/12 for the following reason(s).  
Circle number that applies and give specific reason for refusing to testify.

1. I do not want to be involved (explain) Does not want to Testify
2. I do not know enough about the specific incident to provide relevant testimony (explain)
3. Other (specify reason)

Russell L...  
SIGNATURE

9/13/12  
DATE

[Signature]  
EMPLOYEE SIGNATURE

9/13/12  
DATE

I specifically asked \_\_\_\_\_ to provide a reason for his/her refusal  
to testify and he/she refused to provide further information.

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE

(2)

120

**ATMICA CORRECTIONAL FACILITY**  
**ASSISTANT SELECTION FORM**  
*La Forma de la Seleccin Auxiliar*

1/3/12

In accordance with the provisions of Part 251C, Chapter V, you are entitled to an assistant from a list established at your facility to assist you in connection with charges of misbehavior on 9-10-12  
*De acuerdo con los comestibles de Parte 251C, Capitulo V, usted se titula a un ayudante de una lista establecida en su facilidad para ayudarlo en relacion con los cargos de desman adelante*

**YOU MUST CHOOSE THREE NAMES** from the list below and number them in order of your preference.  
*Usted debe escoger tres nombres de la lista debajo y debe numerarlos en el orden de su preferencia.*

The right to select an assistant has been explained to me and  
*El derecho para seleccionar a un ayudante se ha explicado a mi y*

☒ I wish to choose three of the following:  
*Yo deseo escoger 3 de los siguiente:*

☐ I waive my rights to select an assistant.  
*Yo renuncio mis derechos para seleccionar a un ayudante*

<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	(2) T. MacIntyre	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
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<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	( ) D. Sobus
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	( ) J. Stefaniak
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	( ) R. Nagel	<del>██████████</del>
<del>██████████</del>	( ) R. Koch	( ) L. Nolan	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	( ) K. Volpe
<del>██████████</del>	( ) M. Kuligowski	<del>██████████</del>	(3) R. Worthington
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	( ) N. Locher	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>
<del>██████████</del>	<del>██████████</del>	<del>██████████</del>	<del>██████████</del>

INMATE'S DIN: 09B0562  
*El numero de preso*

SIGNATURE *[Signature]*  
*La firma de preso*

DATE: 9-11-2012  
*La fecha*

OFFICERS SIGNATURE AND DATE

*La firma de funcionario y fecha*

CO WITNESS SIGNATURE: (if applicable)

9-11-2012

9-11-2012

*El signature/fecha del Co-testigo (si aplicable)*

"C" List - started 1/3/12

**EXHIBIT C**

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ATTICA CORRECTIONAL FACILITY

Attica, NY 14011

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INMATE NAME & NUMBER JERVIS ELDER, 09-B-0562

CONDUCTED BY: KEN KLING

DATE OF PROCEEDINGS September 14, 2012

REPORT DATE: September 10, 2012

TIER: 3

---

K. Kling: This is the Attica Correctional Facility, my name is Ken Kling, Hearing Officer this tape will record a tier 3 hearing for Jarvis Elder, 09-b-0562 I will now stop the tape to check the recording. Okay the date is September 14, 2012 the time is 1:37 p.m. okay my name is Ken Kling, I have been designated by the superintendent to conduct this hearing which is being held in the third floor hearing room of C block please identify yourself with name and number

J. Elder: ah, first name Jarvis last name Elder, um din number 09-B-0562

K. Kling: Okay thank you alright this is a tier 3 hearing a part of the three tier disciplinary procedure the entire procedure is recorded please speak up clearly and refrain from speaking while others are speaking so that the tape recorder will pick up all the testimony that is given you may have witnesses on your behalf nothing said by you in response to the charges contained in the misbehavior report or information derived from such statement will be used against you in any criminal proceeding. You should present any oral or documentary evidence that you wish to be considered by me during this hearing any procedural objections claims or defenses that you raise should be make promptly during this hearing so that they may be considered by me and if possible responded to. Do you understand these rights and obligations

J. Elder: Yes

K. Kling: okay the record indicates that you were served with your copy of misbehavior report on September 11, 2012 at 10:00 by CO Rogers is this correct

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J. Elder: yes

K. Kling: Okay it further indicates ah that you wanted tier assistance which was there it is your assistant was C. O. McIntyre is this correct

J. Elder: yes

K. Kling: okay it further indicates that you wanted witnesses ah let's see Inmate Morris, ah Sergeant McCarthy and list of officers I don't know who the officers are that you want based on this ah you signed a disbursement form at the hearing um you probley going to need to get more specific about who you want because based on initials I don't know who those are as the hearing officer alright so the next time we meet I will take that into consideration do you still want these witnesses

J. Elder: yes

K. Kling: Okay, I will inform you that one refused to testify that would be Inmate Morris okay

J. Elder: um is there a specific reason why he didn't want to testify

K. Kling: I will ask him he said on the form that all he wrote does not want to testify

J. Elder: in this case he is the issue the --- filed against me and that is the reason I wanted to bring him here

K. Kling: I can't force him to testify if he refused to I don't have that authority

J. Elder; alright

K. Kling: alright, um I will tell that Sergeant McCarthy is not here today so we don't be finishing this today just do you know alright that we will get through the plea and read the misbehavior report into the record which is what I am going to do now alright, name, Elder, Jarvis, 09-B-0562 housing location 34-16 location of incident A block 1 company date of incident September 10, 2012 at approximately 12:30 pm. rule violation 115.12 forgery, 116.10 stealing, um description of the incident on the above date and time I Sergeant McCarthy issued a misbehavior report Inmate Elder, 09-B-0562 due to an investigation I received on 9/4/12 Inmate Lawrence 97-A-7376 who locks in A-1 20 cell --- possible disbursement forgery against in account the same day I discovered

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that Inmate excuse me the same day I discovered Inmate Elder, 09-B-0562 who locks in A-1-23 cell his cell was set on fire by an unknown inmate on 9/1/12 during the afternoon chow run. On 9/4/12 I also received a lot of confidential information that Inmate Lawrence's who is involved in possible drug activity as well as the arson of Inmate Elders cell I ordered a cell frisk on Inmate Lawrence's cell A-1-20 and various items of contraband were found including addresses phone book a --- 2706 disbursement form in envelope all belonged to Inmate Elder 09-b-0562 and were confiscated and added to my investigation packet. Report date 9/10/12 were there other inmates involved Inmate Lawrence 97-A-7336 um you were confined as a result of this you were not under prior confinement you were

J. Elder: what's that

K. Kling: I am just reading this into what do you object to

J Elder: I have been confined since September 1 um since the date the fire I was not served any type of fire ticket cause of the fire and I didn't lock down since that time till now just now got served 9/10 this ticket for forgery and stealing so um therefore I wasn't interviewed about anything while I was locked down I was never

K. Kling: ----- you were ---- c block and a block and no physical force was used in a supplementary sheet I further read that on 9/5/12 I interviewed Inmate Elder about the fire and showed Elder the items that were confiscated from Lawrence's cell and asked him if they were his Inmate Elder stated that all three items are his I than asked if he filled out and signed the 2706 form with his name on it Elder stated yes. It should be noted that the hand writing on the Inmate Elder personnel 2706 form matches all the 2706 forms with Inmates Lawrence name and number on it that ----- in the investigation therefore it is my belief that Inmate Elder forged all the 2706 forms with Inmate Lawrence's name on it totally \$630.00 all evidence was tagged, bagged tagged and placed in the contraband office by myself Sergeant McCarthy. This investigation is still on going the report date 9/10/12 Jan McCarthy Sergeant

J. Elder: I would like to object to something

K. Kling: Like I just said I am reading the charges into the record okay when we take your testimony you can object to anything you want to and I will take it into consideration but ah this is just a matter of putting the charges into the record along with the evidence. Um the --- in

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Lawrence cell are included in the evidence right here is the outside of the envelope the disbursement form the address list and ---- then the 7 pages of disbursement --- of Inmate Lawrence name these were the ones that were under investigation then 2 mail receipts and the back of a check and part of a check made out to Chris Brunson ? in the facility that is the written evidence that I am showing you to the record at this point okay based on the written evidence that is here and your ---- report um you had to take a plea that you plead guilty or not guilty to any of the charges I am going to read the charge and I will ask you and you just respond alright on the charge of 116.10 property damage or loss reported by Sergeant McCarthy do you plead guilty or not guilty

J. Elder: Not guilty

K. Kling: let me put that on the record on the charge 116.12 counterfeit of forgery reported by Sergeant McCarthy do you plead guilty or not guilty

J. Elder: Not guilty

K. Kling: I will also put that on the report okay the date is 9/14/2012 the time is 1:48 p.m. would you like to sign the record indicating those are your pleas

J. Elder: yes

K. Kling: okay, the record indicates that Inmate Elder is signing the record indicating his pleas of not guilty in both charges okay, today were not going to be able to continue because we don't have any of your witnesses alright so what I am going to do at this point I am going to adjourn the hearing I am going to get back to you next week when I find out Sergeant McCarthy is on duty I am not sure what day I am going to have to find that out I made a phone call to find out he wasn't available

J. Elder: Okay my one thing about the disbursement form author to sign I don't have their names all's I know is that there the ones that sign the disbursement forms so I have no proof of the officers are who signed it

K. Kling: I looked and I am going to honest with I can't tell by

J. Elder: they have to check ID ---- that is the purpose of me

Page 5 of 13

K. Kling: I can understand your --- I am just saying that I don't know who to call the stamp is right over the signature I can't even read it but we will see what we can do I can't promise you because I can't read it I will see what I can do but I am not going to take any -----

J. Elder: now another thing is I never got entitled to copies of any of the evidence --- cause my assistance didn't bring none of this evidence to me and he said this he threw me off my assistance he didn't want to help me or nothing like that so I have no copy of what I am accused of the dates and times all's I have is the misbehavior report and I am entitled to see the evidence that is accused against me

K. Kling: ---- adjourning as of this point alright so the date is September 14, 2012 the time is 1:50 p.m. I am adjourning this hearing pending the ah are ability to bring in the witnesses Sergeant McCarthy and um so this hearing is adjourned for today I am stopping the tape.

(HEARING ADJOURNED)

K. Kling: Okay the time is 10:02 a.m. on September 21, 2012 I am reconvening the hearing on Inmate Elder, 09-B-0562 in for the charge of property damage or loss and 116.10 and counterfeiting or Forgery which reported by Sergeant McCarthy, Okay when we left together we went through the evidence ah that was being presented against you um the misbehavior report the --- that was corrected mail list, um phone number registration form ah disbursement --- request and a copy of the check that was disbursed and I took your plea which was not guilty to both charges that you signed on September 14, 2012 at approximately 1:48 p.m. um at this point I would like to have any statements that you have in relation to these charges, any statement or any evidence that you wish to present

J. Elder: yes I do first of all um the kid Inmate Lawrence that they saying the money was forged out of his account is not out come of that you know what I am saying I knew the kid down in Berkley and I helped his out cause he is on a loss of a few things --- which ever he did on the job I don't know you know what I am saying he had some money coming in so I helped the man out I did some art work I got art supplies of crafts to so I did a lot of art work for the guy so therefore he knew these moneys was going to his address only thing I don't understand is that how did he end up with my personnel information makes it sounds like his checks are being forward cause all my personnel information was found in this kids cell and it tells me right there I am going back --- telling who is going in my cell and taking so I don't know why that was in his



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cell I never got a chance to question and asked me --- he had no right to this stuff --- and to this day he is the reason why my cell was set on fire it is fucked up and on top of that ----- with this guy he has got a little stand- trying to get money but based on conversation that new this money was going to this address to the address and all that so while this forgery I don't know maybe he took some of my stuff out of cell and made it look like my hand writing but I don't know I didn't forge any of those and on top of that it is a policy it is a policy when they check inmates name and ID number prior to giving out mail or taking disbursement forms and I have full knowledge of the officers when they say they took a disbursement from me saying that that his names and numbers on it um I was never questioned about it all's I know is that I got ---- to a arson at my cell and then um Sergeant McCarthy did an investigation report on 9/4 on this inmate about possible forgery's over \$630 missing in account and I take it all this couldn't happen in one day because anything over a \$100 has to be signed by the sergeant so therefore this happened to be going on for a while and I am trying to understand why cause it is not being brought to the sergeants --- money missing out of his account that is the messed up part about this situation cause he could have been -----\$630 is a lot of money that um basically um it shows like the kid is trying to pull a scam to get money and I am getting burnt be hind this on top of the long run I lost everything I ever owned in my cell that had permits receipts for in the package room I have love affair that comes to see me I got kids so I have no reason to steal money from this guy you know to this day I am suffering I have nothing as we speak right now and they want to collect this \$130 and I ain't even got it I have nothing this is only my stuff

- K. Kling: Okay, um okay that is all the testimony that you have as far as --- and you have no I don't what evidence you might be able to present to produce
- J. Elder: there is nothing really I can't present because you got to realize my cell was fucked up I had nothing to present you know what I mean so I am basically speaking was coming from my mind you know what I am saying besides -----
- K. Kling: Your going to have that opportunity in a moment okay um but as far as your testimony itself you don't have anything further to add to it then I just want to make sure we haven't left anything out is all I am asking

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- J. Elder: we should be set that is the mitigating evidence that I have to offer towards this situation because I didn't steal nothing from this guy I didn't steal nothing
- K. Kling: okay since there is no further you want to say at this point I am going to be calling the sergeant up here and questions that you have are going to be directed me and if there relevant we will ask them of Sergeant McCarthy you don't speak directly to the sergeant you speak to me
- J. Elder: Okay
- K. Kling: and then I will relay any questions to the sergeant alright and so I, lets see okay, entering the room with us please identify yourself with your name and title
- Sgt. McCarthy Sergeant McCarthy
- K. Kling: um, you have been asked to be a witness in this hearing um by Inmate Elder and um I have - ticket written for forgery and stealing ah on Inmate Elder on ----
- Sgt. McCarthy: yes
- K. Kling: okay um let me start off by asking you a couple quick question on my own ah what lead you to believe that Inmate Elder was the person who committed a forgery on Inmate Crooks I believe
- Sgt. McCarthy: I authorized a frisk on Lawrence um they found ah certain piece of contraband that Lawrence had of Elders with his name phone number list as well as a disbursement form
- K. Kling: okay thank you would these be those
- Sgt. McCarthy: yes
- K. Kling: okay
- Sgt. McCarthy: and then um when I called um Inmate Elder down for an interview I asked him these three pieces are his and he said yes and I asked him and I asked him do you know what cell and he said yes like I said in the misbehavior reports I noticed the hand writing is similar in both in all the other remaining disbursements of Inmates ----
- K. Kling: okay alright um the only question I have is I couldn't identify I don't know if you can ah can possibly Sergeant McCarthy I

Page 8 of 13

couldn't identify and I asked on the block if anybody could identify any of these individuals who through the inmate verification but to be honest I couldn't read them so I wasn't sure

Sgt. McCarthy: I couldn't identify them either

K. Kling: Okay but I did try in the block with different officers ---- alright um okay do you have questions for Sergeant McCarthy

J. Elder: yes I do, um my first questions for the sergeant is um would like to know that does he have a degree or does he qualify as a hand writing specialist as a correction officer

K. Kling: do you qualify as a hand writing specialist at all sir

Sgt. McCarthy: ----

K. Kling: No, he is not a specialist no

J. Elder: my next question is um is it policy for a correction officer to ask for name and din numbers of the inmates prior to giving out mail legal mail and taking ----

K. Kling: would that be a policy here

Sgt. McCarthy: yes

K. Kling: okay

J. Elder: prior to his investigation from 9/4 from Inmate Lawrence ah up till 9/10 issue for a misbehavior report of Inmate Elder I would like to know that can any of these officers that they took a disbursement form from Inmate Elder with Inmates Lawrence name and number on it

Sgt. McCarthy: he wouldn't be able tell -----

J. Elder: so

Sgt. McCarthy: he can't answer for those officer

J. Elder: okay my next question is there are three copies of the disbursement form the first white copy is stamped with the hall captain signature on it the yellow copy and the pink copy does not have the stamp from the hall captain so therefore you can not read the signature on the white page cause it is stamped by the hall captain how come

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that going to the business office and all that you can get the yellow copy ----- from officers

K. Kling: are you asking me this or him

J. Elder: that is what I am asking --- the white copy the first copy was it stamped by the hall captain but the yellow copy and the pink copy the stamp doesn't go through with the signatures so therefore you can get the signatures of the officers from the pink copy and the yellow copy I don't understand why's that

K. Kling: okay that would be a question you would be asking me then correct cause I investigate that

J. Elder: Yes

K. Kling: right now the questions are for Sergeant McCartney after were done with him if you want to ask you welcome to

J. Elder: Okay so my next question so there is no reliable proof saying that an officer is safe to say that they took these disbursement forms from me

K. Kling: would there be anybody that would be able to testify to that

Sgt. McCarthy: I will just tell you straight out no because since there not being identified about the disbursement form we can't ask them

J. Elder: Okay so my next question to the sergeant he has gone off for weeks because of what he say's looks like say what ---- like from the disbursement form from Inmate Lawrence to mine it is his belief that I forged it that is his belief

K. Kling: you believed he forged him because of his signature based on compared to the

Sgt. McCarthy: correct

J. Elder: okay

K. Kling: anything else for the sergeant

J. Elder: um, that is about it you know that is about it

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K. Kling: alright thank you your excused okay now I have made that request that you asked me --- of the other copies okay um it wasn't the stuff that---- handwriting I can see the signatures on these

J. Elder: I basically the stamp was over

K. Kling: that stamp was over but I was saying I can see the signature but it's the signature you don't understand if you take a look at these I will just show you to as an example these two don't even have the stamps aren't interfering at all these people have lousy handwriting alright I don't know what school they went to but I could not read the signature on these I can see the signatures just show you understand then it is not a matter of the stamp I don't want to have you sit there and make you think that I did --- you want them as witnesses I will try and get you them as witness

J. Elder: ----- my case to prove that same ---- his policy check names and numbers din number --- um

K. Kling: and his evidence is basically this hand writing on these is terrible --

J. Elder: I have to object to that

K. Kling: your welcome to object I am just looking right now trying to look through all the evidence and try to be fair and listen to both sides that is what I am suppose to do here

J. Elder: the main --- these items are found in this guys cell that makes me believe he wasn't duplicating my handwriting to set me up to make me like somebody was stealing money from this guy I understand these articles were found in his cell they did a cell frisk on me and prepared it is a different story then ain't none of my items he had no right to a phone list what does he got to do with my phones my address book that has nothing to do with me and this disbursement form

K. Kling: alright um okay so Sergeant McCarthy is given his testimony in your presence um you also wanted a handwriting specialist we don't have access to that so I am going to deny that um there is no directive on forgery specifically rules about forgery in the rule book which is what your being charged with um I just want to make sure everything you requested

Page 11 of 13

- J. Elder: he wrote down the wrong thing I said the directive on the timeliness on the misbehavior report when it is served I don't know why he put forgery so that is he misprinted the wrong thing
- K. Kling: okay well um okay and as far as the officer who signed since you can't identify them and I can't either, and neither can the sergeant or any of the officer that I talked to based on the signatures I can't get those as witness for you alright um I am just trying to be straight up with you on this
- J. Elder: I hear ya
- K. Kling: okay um are there any other witnesses that you want to call I guess I need to know now
- J. Elder: I don't have any other witnesses but my next question is that um is this basically all the sustained evidence that is in front of me
- K. Kling: all the evidence they have has been presented yes
- J. Elder: okay
- K. Kling: alright um okay so all the witness have been called okay quick review we have gone over the misbehavior report the disbursement forms the information that was found in Inmate Lawrence cell um Sergeant McCarthy testimony your statements um we went over all the request that you made of your tier assistance that could be obtained um some that could not be obtained Inmate Lawrence was asked to testify but he refused to testify and I showed you the inmate refusal on that um as far as the summary of everything so now I have a couple of quick questions of you okay have all the witnesses which you want to call been heard
- J. Elder: ah I say I object on that because you know still even though you can't read the signatures that proves that --- the officer that signed them so, so even though you already explained that is another that is more than one officer I know it is not just one officer
- K. Kling: I can see it is different officers when you say none of them have handwriting that I could read I tried so I am being honest with as far as the witnesses that could be obtained have they all been heard and I really can't get any others that you had mentioned
- J. Elder: that is about it that is basically the evidence on my case

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K. Kling: do you have any further testimony or documentary evidence to give um

J. Elder: I feel like I am violated I have been in this jail since 09 I have never had a problem I don't have a disciplinary record maintained jobs um known in these blocks not to be a problem and um I just got involved with the wrong guy who got me into trouble that is all you know and ah that I was helping the man out and he came back in the long run to hurt me you know what I am saying because to this day I had nothing in my cell as we speak and I am going through it right now I can't get no state issue clothes my ---- talk to my family on visits I have not been getting my mail I don't know what is going on you know it feels like I have been violated that is all my rights

K. Kling: Okay um do you have any procedural objections is the way I am holding this trial or this hearing I should say it is not a trial

J. Elder: Um, I can say that you pretty much fair you can only do so much you know so --- I already object to it that is basically it

K. Kling: alright I am going to close the testimony at this point the time is 10:22 a.m. um September 21, 2012 I am going to stop the tape and make a written disposition I will then restart the tape and read it into the record

(HEARING ADJOURNED)

K. Kling: okay the time is 10:38 a.m. on September 21, 2012 I have made a written disposition I will now read it into the record okay on this report I am going to find guilty of 116.10 property damage or loss on 116.12 counterfeiting or forgery also guilty, ah penalty that I am imposing for these is going to be 6 months each of the following SIU, recreation, packages and commissary ah and also restitution for the \$630 ah that I believe was forged that I believe was forged. Um the statement of evidence that I relied upon in this case ah in this case I relied upon the verbal testimony given by Sergeant McCarthy in addition to the written misbehavior report original evidence of the signature was compelling similarity's it appeared to me that some officers may have been lacks in verify ID'S I also felt that no credible defense is really given ah the reason for my disposition is severity of the charges may have already set off retaliation which is disruptive to the smooth operation of the facility both inmates and staff in harms way um a list of special instructions has a list of restitution in the amount of \$630 by Inmate Elder, 09-B-0562 to Inmate Lawrence okay um I

Page 13 of 13

am going to give you a copy of this ---- would you like to sign that you receiving your copy

J. Elder: does this mean I am going to the box

K. Kling: ---- okay before I can indicate that Inmate Elder signed saying that he is going to receive his copy of this disposition on 9/21/12 at 9:40 a.m. okay here is a copy of this okay ah I will give you a copy of this one ----- alright ah notice of appeal if you desire to challenge my disposition in this matter you must file an appeal form which is available in your housing unit you have 30 day's in which to file an appeal tier 3 appeal forms are to be sent directly to the commissioner you should clearly state on the appeal form every reason for appealing this disposition if you do not state your reasons for appealing the person who is reviewing will not know what it is you object to do you understand your appeal rights.

J. Elder: yes

K. Kling: okay the time is 10:32 a.m. on September 21, 2012 ah this concludes this hearing .

4/4/13  
SMD



9/11/12 STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES  
DCP100 HEARING RECORD SHEET - ATTICA GENERAL

REVIEW OFFICER LT PAWLAK  
REVIEW DATE 09/10/12 TIER 3  
C.R. DATE 03/31/2025 M.E. DATE 02/12/2028

- 1) NAME ELDER, JARVIS -- DIN 09B0562 LOCATION OC-34-16S  
2) INCIDENT DATE 09/10/12 INCIDENT TIME 12:30 PM  
3) INMATE WAS CONFINED  
4) INMATE WAS NOT RELEASED AT REVIEW  
5A) SERVING OFFICER CO D. ROGERS SERVING DATE/TIME 09/11/12 10:00 AM  
5B) RELEASED FROM PREHEARING CONFINEMENT? \_\_\_\_\_  
AUTHORIZED PERSON \_\_\_\_\_ DATE AUTHORIZED \_\_\_\_/\_\_\_\_/\_\_\_\_  
6) ASSISTANT NAME CO J. MacTavere  
7) INTERVIEW DATE 9/18/12 INTERVIEW TIME 11:30 AM  
8) EXTENSION NUMBER \_\_\_\_\_ (IF APPLICABLE)  
9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE  
PURSUANT TO DIRECTIVE 4937 OR 4938  
TEST REQUEST FORMS \_\_\_\_\_ TEST PROCEDURE FORMS \_\_\_\_\_  
TEST RESULT FORMS \_\_\_\_\_ APPENDIX C \_\_\_\_\_ OTHER (SPECIFY) \_\_\_\_\_  
10) INMATE 15 ENGLISH SPEAKING  
A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE? \_\_\_\_\_  
B) INTERPRETOR AT HEARING \_\_\_\_\_  
11) HEARING BEGIN: DATE 9/14/12 TIME 11:37 AM END: DATE 9/14/12 TIME 10:42 AM  
12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING  
CHARGE  
NUMBER DESCRIPTION OF CHARGES REPORTED BY INMATE'S  
116.10 PROPERTY DAMAGE OR LOSS SGT MCCARTHY PLEA  
116.12 COUNTERFEITING OR FORGERY SGT MCCARTHY NG  
NG

SIGNATURE OF INMATE Jarvis Elder

DATE 9/14/12

TIME 1:45 PM

13) WITNESSES: IF NONE REQUESTED, CHECK HERE

A) REQUESTED BY INMATE

Sgt. McCarthy

TESTIFIED

Y ☒ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

IN INMATE'S PRESENCE

Y ☒ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

B) REQUESTED BY HEARING OFFICER

TESTIFIED

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

IN INMATE'S PRESENCE

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

Y \_\_\_\_\_ N \_\_\_\_\_

\*NOTE\* IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE: [Signature]

PENALTY CODE	DESCRIPTION	PENALTY NO DAYS	START DATE	RELEASE DATE	SUSPEND M' DAYS	DEFERRED HO DAYS	RESTITUTION \$\$\$\$ . cc
A000	SHU	6	7/10/12	3/10/13			
D000	Recreation	6	9/10/12	3/10/13			
F000	Packages	6	9/10/12	3/10/13			
G000	Commissary	6	9/10/12	3/10/13			
X000	Restitution						\$630.00

07/11/12

STATE OF NEW YORK - DEPARTMENT OF CORRECTION SERVICES PAGE 2  
ATTICA GEN

DCP004

SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 09B0562 NAME: ELDER, JARVIS

HEARING DATE: 7/14/12

## A. STATEMENT OF EVIDENCE RELIED UPON:

*In this case I relied upon the verbal testimony given by Sgt. McCarthy in addition to the written misbehavior report. The visual evidence of the signature was compelling in the similarities. It would appear to me that some officers may have been lax in verifying I.D. I also felt that*

## B. REASONS FOR DISPOSITION:

*no credible defense was given.*

*The severity of a charge of this nature can and may have already set off retaliation which is disruptive to the smooth operation of a facility and puts both inmates and staff in harm's way.*

## C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS

## OR SPECIAL EVENT LOSS:

*Restitution in the amount of \$630.00 be paid by Inmate Elder 09B0562 to Inmate Lawrence 97A7376.*

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION. DATED: 9/21/12

*[Signature]*  
HEARING OFFICER SIGNATURE

*[Signature]*  
INMATE SIGNATURE

9/21/12 10:40 AM  
DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

\_\_\_\_ FOR TIER II HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

☒ FOR TIER III HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

\*\*\*SUCCESSFUL PRINT COMPLETION\*\*\*

**EXHIBIT D**

DEPT. OF Correctional Services  
RECEIVED

OCT 16 2012

Date: September 21, 2012  
To: Department of Corrective Services /State Campus Building #2 Special Housing Inmates  
From: Jarvis D. Elder Din # 09B0562 Disciplinary Programs  
Subject: Violation of Inmate Constitutional Rights  
Attention: Director of Special Housing

I am notifying you of my "Appeal" concerning the determination or results of Superintendent's K. Kling hearing conducted against me.

The Hearing was held at: Attica Correctional Facility

Date of Disposition: September 21, 2012 10:42 am.

Date of Incident: September 10, 2012 12:30 pm.

Disposition Received: Six months of Shu (Special Housing Unit), Loss all privileges, \$630.00 restitution; including the time frame of 9/10/12 through 3/10 2013.

In accordance with Section 254.8 of title 7 NYCRR; I am requesting that you review my hearing and possibly reverse the Superintendent's resolutions. My Fourteen Amendment Constitutional Rights surrounding the time frame of 9/14/12 through 9/21/12 were violated by these Officers of Justice. The Hearing began on 9/14/12 at 1:37 pm with Superintendent K. King presiding.

I strongly believe that the following Procedural Violations occurred during my Tier III hearing:

1. I objected to my Tier III Assistant because I was never brought the Directive of Timelines for chapter 5 and 6 Title 7 of New York Codes, Rules and Regulations (7N.Y.C.R.R.) I was not happy with his assistants. (Bias)
2. I was never given or able to witness the documents that they accused me of forging. So I was deprived of preparing my defense.
3. I was denied the request of having the Officers present that signed the 2706 disbursement forms. They were never located or questioned about the disbursement forms they signed off on.
4. The witness refused to testify and the case was dealing with him. There was no statement declaring that those disbursement forms came from me.

5. On 9/1/12, I stated at the hearing that I was keep locked because of arson. My cell was deliberately set on fire by suspect inmate "Lawrence "while I was at afternoon chow. Sergeant McCarthy stated in my misbehavior report, that he had received reliable confidential information that inmate Lawrence is involved in possible drug activity as well as the arson of inmate Elder's Cell. This information was verified.
6. Yet, on 9/10/12, I was issued a misbehavior report from Sergeant McCarthy based on "inmate Lawrence accusations that I forged his name to obtain monies from of his account.
7. I was denied the opportunity to ask relevant questions and my objections to their statements were not allowed. I was troubled at Superintendent K. King responses to my questions. He stated that we are not going to examine the evidence at this time but an adjournment needed to be schedule. Sir, it is at this point; that I felt and believed that I was not going to get a Fair Hearing and my civil rights as a human being would be violated.
8. I asked for a handwriting specialist to examine the documents in question. However, I was denied even though this request was crucial in proving my innocence.
9. I stated that on 9/4/12 an investigation was conducted on inmate Lawrence about the arson of inmate Elder's cell. There were three items found in intimate Lawrence cell; a phone list, an address list and a completed 2706 disbursement form with my name and number on it. I confirmed that inmate Lawrence had no right to these items and that were discovered in his cell after my cell was set on fire.
10. According to Superintendent K. King records; there is no documentation stating that the address belonged to me.
11. Sergeant McCarthy came to testified about some question that I asked him. It is at this time, that I asked him does he have a Degree or qualified to be a Hand Writing Specialist. His response was "No". So how can he make such an incriminating statement against me in his previous reports concerning his beliefs? This is my life that we are talking about.
12. I asked him isn't it Policy to check the inmate Name and Numbers prior to handing out Mail and taking Disbursement Forms. His response was "Yes".
13. I also asked Sergeant McCarthy (prior to the Investigation on 9/4/12 on inmate Lawrence up to 9/10/12) and the issuing of inmate Elder a misbehavior report:

- was any of these Correctional Officers involved with verification of these disbursement forms questioned? **He said No.**
- Can these Correctional Officers say that they took any disbursement forms from me with inmate Lawrence name & numbers on it? **His response was "No**

My belief is that Sergeant McCarthy did not do a completely honest or a thorough investigation for there was nothing in the misbehavior report states the following:

- Why where my personal items in inmate "Lawrence" cell and what were was his motive for having these things? Is he a credible witness concerning his forgery accusations? Noting that exposure of possible drug activity and contraband was confirmed in his cell. If he was charged for the arson of my cell, why wasn't my property replaced? Again, I am the victim here.
- There was no documentation of the dates these disbursements were done.
- Where is the testimony of the Officers involved in the signing of these "Lawrence" disbursement forms? There is a proper procedure in place to avoid things of this nature.
- Finally, Sergeant McCarthy job title is a Correctional Sergeant. So, I believe that he does not have the right to make a determination or opinion going off his gut feeling or belief that I am guilty as accused of forgery by his reliable source that never came forth to confirm his accusations.

**In Conclusion:**

I truly believe that Voc. Superintendent K. King reason for Disposition is unjustified, unfair and exceptionally harsh towards me. The evidence was inaccurate, not examined from every perspective, and wasn't presented to Voc. Superintendent K. King in a proficient manner. Therefore, the hearing was not conducted according to state rules & regulations. It violated my procedural rights. I cannot help to wonder if all of this mistreatment & unfairness is stemming from a prior T.V. incident I had with a previous Correctional Officer. I have been at Attica ever since April 5, 2009. My record will show that I have NO PREVIOUS disciplinary issues. So why have I been a victim of such injustice?

Can you please take the time and consider my plea for HELP by examining the Hearing Disposition that took place at Attica Correctional Facility on 9/21/2012 at 10:42 a.m. I understand the tapes are available for your listening? I will be forever Thankful.

P.S. I am no longer at Attica Correctional Facility. I have been transfer to Upstate Correctional Facility as of 10/9/2012. Please notify me at the following address.

**Inmate Mailing Address:**

Upstate Correctional Facility  
309 Bare Hill Road  
P.O. Box 2001  
Malone, 12953  
1-518- 483-6997

Sincerely,

**Mr. Jarvis D. Elder    Din # 09B0562**





STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION  
THE HARRIMAN STATE CAMPUS – BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

BRIAN FISCHER  
COMMISSIONER

JOSEPH F. BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

pd  
10/16/12

October 30, 2012

Mrs. Winifred L. Pike  
6915 N. Joanne Circle  
Niagara Falls, NY 14304

RE: Jarvis Elder, #09-B-0562  
Upstate Correctional Facility

Dear Mrs. Pike:

This is in response to your recent letter concerning the appeal of Mr. Elder's Superintendent's Hearing of September 21, 2012, conducted at Attica Correctional Facility.

Please be advised that your letter was received by the Office of Special Housing/Inmate Disciplinary Programs to supplement the pending appeal of the hearing. A review of the available information will be conducted and Mr. Elder will be advised directly of the results.

Sincerely,

A handwritten signature in cursive script, appearing to read "Prack".

Albert Prack  
Director, Special Housing/  
Inmate Disciplinary Programs

AP/dmv

cc: Superintendent Rock, Upstate Correctional Facility  
Central Files

NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
THE HARRIMAN STATE CAMPUS - BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

BRIAN FISCHER  
COMMISSIONER

JOSEPH BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: ELDER, JARVIS

NO. 0980562

HEARING FACILITY: ATTICA

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT  
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF  
SEPTEMBER 21, 2012, HAS BEEN REVIEWED AND AFFIRMED ON DECEMBER 6, 2012.

ALBERT PRACK  
DIRECTOR, SPECIAL HOUSING/  
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT  
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND  
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL  
HOUSING/INMATE DISCIPLINE PROGRAM.

**EXHIBIT E**

JUN 18 2013

At a term of Supreme Court held in and for  
the County of Wyoming, at the Courthouse  
in Warsaw, New York, on June 10, 2013.

PRESENT: HONORABLE MARK H. DADD  
Acting Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF WYOMING

---

In the Matter of the Application of  
JARVIS ELDER, #09-B-0562, *Petitioner*

v.

STATE OF NEW YORK  
Wyoming County Clerk's Office ss.

I, Rhonda Pierce, Clerk of the County, of the  
County Court of said County, and the Supreme Court,  
both Courts of Record having a common seal, do  
hereby certify that I have compared the annexed copy  
of Order with the original entered.

JUN 18 2013 in this office and that the same  
is a correct transcript thereof and of the whole of said  
original in Testimony whereof, I have hereunto set my  
hand and affixed the Seal of said County and Courts, at  
Warsaw, N.Y.

JUN 18 2013  
*Rhonda Pierce*, Clerk

Index No. 21,303-12

BRIAN FISCHER, Commissioner, NYS Department  
of Corrections and Community Supervision, *Respondent*

---

For the Petitioner  
WYOMING COUNTY-ATTICA LEGAL  
AID BUREAU, INC.  
Norman P. Effman, Director  
18 Linwood Avenue  
Warsaw, New York 14569

For the Respondent  
ERIC T. SCHNEIDERMAN, Attorney General  
by Stephanie J. Calhoun  
Assistant Attorney General  
Main Place Tower, Suite 300A  
350 Main Street  
Buffalo, New York 14202

### ORDER

By second amended petition pursuant to Article 78 of the CPLR verified on  
May 10, 2012, Jarvis Elder seeks review of a superintendent's hearing concluded on  
September 21, 2012 at the Attica Correctional Facility. Petitioner, represented by counsel  
assigned by the order to show cause dated February 5, 2013, contends that the hearing

Order

-2-

Index No. 21,303-12

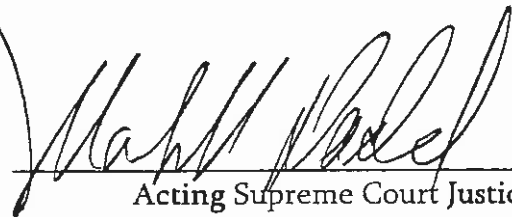
determination should be annulled. Upon the answer to the first amended petition, dated April 24, 2013, and the answer to the second amended petition, dated May 21, 2013, the respondent requests that the petition be transferred to the Appellate Division and thereafter denied or dismissed.

In his original petition, which is incorporated by reference within his second amended petition, the petitioner raised a challenge to the sufficiency of the evidence supporting the hearing determination. As a consequence, the matter must be transferred to the Appellate Division pursuant to CPLR §7804(g).

NOW, THEREFORE, it is hereby

ORDERED that this matter is transferred to the Appellate Division for the Fourth Department pursuant to CPLR §7804(g).

DATED: June 10, 2013

  
\_\_\_\_\_  
Acting Supreme Court Justice

**EXHIBIT F**

DOCKET NO. TP 13-01112

TO BE SUBMITTED BY:

LEAH RENE NOWOTARSKI, ESQ.  
(585) 786-8450

STATE OF NEW YORK	:	SUPREME COURT
APPELLATE DIVISION	:	FOURTH JUDICIAL DEPARTMENT

---

In the Matter of the Application of  
JARVIS ELDER, #09-B-0562,

Petitioner,

-v-

BRIAN FISCHER, Commissioner,  
Department of Corrections and Community Supervision,

Respondent.

---

BRIEF AND APPENDIX FOR PETITIONER

Wyoming County Index No. 21,303-12

---

NORMAN P. EFFMAN  
Attorney for Petitioner  
Executive Director  
WYOMING COUNTY-ATTICA  
LEGAL AID BUREAU  
18 Linwood Avenue  
Warsaw, New York 14569  
(585) 786-8450

LEAH RENE NOWOTARSKI, Of Counsel

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<u>Matter of Tumminia v. Selsky</u> , 303 A D 2d 1006 . .	9
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<u>Matter of Velasco v. Selsky</u> , 621 NYS 2d 725 . . .	8
<u>Wolff v. McDonnell</u> , 418 U S 539 . . . . .	7
7 N.Y.C.R.R. §250 et seq. . . . .	7
7 N.Y.C.R.R. §251-3.1 . . . . .	7
7 N.Y.C.R.R. §251-4.1 . . . . .	7
7 N.Y.C.R.R. §254 . . . . .	7

QUESTION PRESENTED

1. Was sufficient evidence adduced at the challenged Superintendent's hearing to support findings of guilt?
2. Was the Petitioner denied due process?

## NATURE OF THE CASE

This is an Article 78 proceeding transferred to this Court pursuant to CPLR §7804(g) by Order of the Wyoming County Supreme Court (Dadd, T.A.J.S.C.) dated Jun 10, 2013 and entered on June 18, 2013 (A-1-2\*).

On February 5, 2013, the Wyoming County Supreme Court (Dadd, T.A.J.S.C.) granted Petitioner's application for a petition pursuant to Article 78 of the CPLR and made it returnable on April 4, 2013, before a Special Term of that court held at the Wyoming County Court. The Respondent filed an Answer dated April 24, 2013. In response, Petitioner filed an Amended Petition dated May 10, 2013, and Respondent filed an Answer to Amended Petition dated May 21, 2013.

By Order of transfer, Justice Dadd held that the petition contained an issue as to whether sufficient evidence existed to sustain the hearing officer's finding of guilt at the Superintendent's hearing concluded on September 21, 2012 at the Attica Correctional Facility.

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\* Numbers in parentheses preceded by "A" refer to pages of the Appendix.

## FACTS

On September 10, 2012, Correction Officer McCarthy (“C.O. McCarthy”) learned that Inmate Elder’s (“Mr. Elder”) cell had been set on fire, possibly by Inmate Lawrence, whose account had been forged (Answer Exhibit A). He learned that Inmate Lawrence set the cell on fire through confidential information (Id.). After ordering a frisk of Inmate Lawrence’s cell, C.O. McCarthy showed three recovered forms to Mr. Elder, and Mr. Elder admitted to completing and signing those forms (Id.). C.O. McCarthy noted that the handwriting on Mr. Elder’s personal forms matched the handwriting on Inmate Lawrence’s forms (Id.). As a result, Mr. Elder was charged with violating the following rules:

- 116.10: Stealing
- 116.12: Forgery (Id.).

A Tier III Superintendent’s Hearing was held at the Attica Correctional Facility on September 14 and 21, 2012 before Ken Kling (“Hearing Officer”) at which Mr. Elder pled not guilty to both charges (Id. Exhibit F at 1, 4). At the hearing, Inmate Lawrence refused to testify, indicating that he did not want to testify (Id. at 2). Mr. Elder voiced his suspicions as to how his personal information was found in Inmate Lawrence’s cell, especially since Inmate Lawrence did not have permission to have Mr. Elder’s personal information (Id. at 5-6). Mr. Elder denied forging any documents or stealing anything from Inmate Lawrence (Id. at 6-7). Mr. Elder identified witnesses that he requested by indicating that although he did not know their names, they signed the disbursement forms (compare Id. at 4 to Exhibit G: Disbursement or Refund Requests).

Sergeant McCarthy also testified. He testified that Mr. Elder's name, phone number list, and disbursement form were found in inmate Lawrence's cell (Exhibit F at 7). Mr. Elder claimed ownership of those papers (Id.). The handwriting was similar in all the forms (Id.). The sergeant could not identify the signatures on the paperwork, though (*see Id.* at 8). He believed that Mr. Elder forged a disbursement form based on a comparison of handwriting between Mr. Elder's and Inmate Lawrence's disbursement forms (Id. at 9).

The hearing officer found Mr. Elder guilty of the charges (Id. at 12). He relied on the following information:

- Sergeant McCarthy's testimony
- Written misbehavior report
- Visual evidence of signature
- Officers lax in verifying ID
- No credible evidence was given (Exhibit H).

Mr. Elder was placed in the Special Housing Unit for 6 months, and lost recreation, packages, and commissary, each for 6 months (Id.). The hearing officer ordered Mr. Elder to pay \$630 in restitution (Id.). Mr. Elder objected to his denial of a copy of Chapter V and VI, denial of witnesses and documents, a witness's refusal to testify, and the handwriting analysis (Exhibit I: Inmate Appeal).

Mr. Elder appealed that decision to the commissioner, and the decision was affirmed on December 6, 2012 (Exhibit I). Mr. Elder commenced this CPLR Article 78 proceeding which has been transferred to this Court for decision.

## ARGUMENT

### I. INSUFFICIENT EVIDENCE WAS ADDUCED AT THE SUPERINTENDENT'S HEARING TO SUPPORT FINDINGS OF GUILT.

A reviewing court should review the whole record to determine whether there is a rational basis in it for the findings of fact supporting an agency's decision (McCormick Evidence [2d ed], § 352, p 847; *see Matter of Pell v Board of Education*, 34 N Y 2d 222, 231 [1974]; Siegel, New York Practice [1978], § 560, p 783). An administrative determination must be supported by substantial evidence (*see People ex rel Vega v Smith*, 66 N Y 2d 130, 139 [1985], quoting CPLR 7803, *Matter of Eagle v Paterson*, 57 N Y 2d 831, 833 [1982]; *300 Gramatan Ave. Assoc. v State Division of Human Rights*, 45 N Y 2d 176, 180 [1978]). Substantial evidence is the kind of evidence on which responsible persons are accustomed to rely in serious affairs and such relevant proof as a reasonable mind may accept as adequate to support a conclusion of fact (*Vega* at 139). It is less than a preponderance of the evidence, and for burden of proof, demands only that an inference be plausible, but not the most probable (*Matter of Miller v. DeBuono*, 20 NY2d [1997]). It does not rise from bare surmise, conjecture, speculation, or rumor (*Gramatan* at 180).

Where handwriting analysis is at issue, a hearing officer may compare and rule on handwriting in evidence, absent testimony from a handwriting expert (*Matter of Smith v. Coughlin*, 198 AD2d 726, 726 [3d Dept 1993]). When a hearing officer compares handwriting evidence to handwriting samples, he must note the similarities on

the record to conclude sufficiently that an inmate had wrote both documents (Matter of Lumpkin v. Fischer, 93 AD3d 1011, 1012 [3d Dept 2012]). The absence of sufficient handwriting similarities between the documents will not support substantial evidence that they were written by the same person (Matter of LaSean Brown v. Fischer, 91 AD3d 1336, 1337 [4th Dept 2012]).

In the instant matter, there was no substantial evidence that Mr. Elder forged, and therefore stole, money. The hearing officer broadly stated that the handwriting appeared similar without particularizing how the handwriting on the disbursement forms compared to Mr. Elder's handwriting samples on file. Upon closer review, Mr. Elder's handwriting (neither print nor signature) does not match the handwriting on Inmate Lawrence's documents (compare Exhibit G Elder Disbursement or Refund Request and Inmate Accounting System-Mail Receipt to Exhibit G Lawrence Disbursement or Refund Requests). Furthermore, Inmate Lawrence did not testify; therefore, the hearing officer could not verify the credibility of his signature or disbursement recipients: it is not unreasonable for an inmate to request disbursements to the Support Collection Unit to fulfill his obligations under an existing child support order, as Inmate Lawrence's disbursement forms requested. Without his testimony, the hearing officer could never know whether he gave permission to Mr. Elder to take anything from his inmate account.

**EXHIBIT G**



STATE OF NEW : SUPREME COURT  
APPELLATE DIVISION : FOURTH JUDICIAL DEPARTMENT

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In the Matter of the Application of  
JARVIS ELDER, #09-B-0562 (GREAT MEADOW),

Petitioner,

-v-

**NOTICE OF ENTRY**

BRIAN FISCHER, Commissioner,  
NYS Department of Corrections and  
Community Supervision,

APPELLATE DIVISION  
DOCKET NO. TP 13-0112  
Wyoming County Index No. 21,303-12

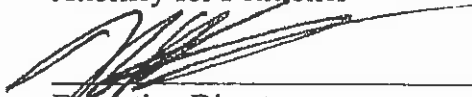
Respondent.

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PLEASE TAKE NOTICE that the annexed Memorandum and Order entered by this Court on March 21, 2014, in the above proceeding, is a true and complete copy, duly filed in the Office of the Clerk of the Appellate Division, Fourth Judicial Department on March 21, 2014.

Dated: Warsaw, New York  
March 25, 2014

NORMAN P. EFFMAN  
Attorney for Petitioner



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Executive Director  
WYOMING COUNTY-ATTICA  
LEGAL AID BUREAU, INC.  
18 Linwood Avenue  
Warsaw, New York 14569  
(585)786-8450

TO: ERIC T. SCHNEIDERMAN  
Attorney General of the State  
Of New York  
The Capitol  
Albany, New York 12224

SUPREME COURT OF THE STATE OF NEW YORK  
*Appellate Division, Fourth Judicial Department*

90

TP 13-01112

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF JARVIS ELDER, PETITIONER,

V

MAY 24 2014

MEMORANDUM AND ORDER

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY  
SUPERVISION, RESPONDENT.

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WYOMING COUNTY-ATTICA LEGAL AID BUREAU, WARSAW (LEAH R. NOWOTARSKI OF  
COUNSEL), FOR PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (PETER H. SCHIFF OF  
COUNSEL), FOR RESPONDENT.

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Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Wyoming County [Mark H. Dadd, A.J.], entered June 18, 2013) to review a determination of respondent. The determination found after a tier III hearing that petitioner had violated various inmate rules.

It is hereby ORDERED that the determination is unanimously annulled on the law without costs, the amended petition is granted and respondent is directed to expunge from petitioner's institutional record all references to the violation of inmate rules 116.10 (7 NYCRR 270.2 [B] [17] [i]) and 116.12 (7 NYCRR 270.2 [B] [17] [iii]).

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a tier III disciplinary hearing, that he violated inmate rules 116.10 (7 NYCRR 270.2 [B] [17] [i] [stealing]) and 116.12 (7 NYCRR 270.2 [B] [17] [iii] [forgery]), relating to his alleged forgery of another inmate's name on certain disbursement forms. We agree with petitioner that the determination is not supported by substantial evidence (*see generally People ex rel. Vega v Smith*, 66 NY2d 130, 139), and we therefore grant the amended petition, annul the determination and direct that all references to the matter be expunged from petitioner's record. Although a misbehavior report may by itself constitute substantial evidence of guilt (*see id.* at 140-141), here the misbehavior report was based upon the belief of the sergeant who authored it that petitioner forged another inmate's signature on certain disbursement forms, and there is no indication in the misbehavior report that the sergeant showed the other inmate the disbursement forms or that the other inmate claimed that it was not his signature on the forms. There likewise was no evidence to that effect presented at the hearing. Although five of

the seven disbursement forms bear the stamp "inmate identification verified hall capt.," those correction officers were not identified in the misbehavior report and their signatures are obscured by the stamp on the top copy of the triplicate disbursement form. Indeed, we note that the record establishes that petitioner requested that those correction officers be identified by using copies in the triplicate disbursement form and that they be called as witnesses at the hearing. The hearing, however, concluded without compliance with petitioner's request. Indeed, we note that the Hearing Officer indicated that the signatures of the hall captains were illegible and thus unidentifiable, even by those officers in the block to whom the Hearing Officer had spoken, but nevertheless agreed to "try" to comply with petitioner's request to call those witnesses. The record does not reflect any efforts made by the Hearing Officer to do so.

We further agree with petitioner that he was denied meaningful employee assistance and was prejudiced by the inadequate assistance he received. Thus, at a minimum, petitioner would have been entitled to a new hearing in any event (see *Matter of Bellamy v Fischer*, 87 AD3d 1217, 1218). Petitioner objected to the assistance provided to him, complaining that the assistant did not bring him copies of the documents being used against him and that the assistant did not want to help him. "When the inmate is unable to provide names of potential witnesses, but provides sufficient information to allow the employee [assistant] to locate the witnesses 'without great difficulty[,'] failure to make any effort to do so constitutes a violation of the meaningful assistance requirement" (*Matter of Velasco v Selsky*, 211 AD2d 953, 954). The record fails to set forth what efforts, if any, the employee assistant made to ascertain the names of the correction officers who signed the disbursement forms and what measures, if any, the assistant took to secure their presence at the hearing. Under the circumstances, it cannot be said that "reasonable efforts were made to locate petitioner's witnesses" (*Matter of Davila v Selsky*, 48 AD3d 846, 847).

Furthermore, petitioner was denied the right to call a witness, i.e., the other inmate, as provided in the regulations (see *Matter of Barnes v LeFevre*, 69 NY2d 649, 650; *Matter of Robinson v Fischer*, 68 AD3d 1687, 1688). "The hearsay report of a correction officer that a witness refuses to testify unaccompanied by any reason from the witness proffered to the [H]earing [O]fficer for such refusal is not a sufficient basis upon which an inmate's conditional right to call witnesses can be summarily denied" (*Barnes*, 69 NY2d at 650).

**EXHIBIT H**

TO: SUPERINTENDENT, MARK L. BRADT  
ATTICA CORRECTIONAL FACILITY  
P.O. BOX 149  
ATTICA, NEW YORK, 14011-0149

C134/16

9/22/12

REQUESTING DISCRETIONARY REVIEW

Dear Superintendent

I am writing to you because my 14th Amendments have been violated from the dates of 9/14/12 and 9/21/12.

My Employee assistant didn't bring me certain documents I requested for Chapter V, Disbursements I am accused of forging, didn't take to any of the officers that signed the Disbursement forms.

The Hearing officer didn't make an inquiry while the inmate refused to testify and the officers I requested for at the hearing. The Misbehavior report is not in compliance with (D.O.C.'s) standards.

This proceeding is in violation with (7 NYCRR 251-4.1, 4.2) (7 NYCRR 251-3.1 [c] [1]) (7 NYCRR 254.5, 254.6 [a] [3]).

Can you please look into this matter.

cc: on file

*Janis Elder*  
JANIS ELDER 09B0562  
A.C.F.  
P.O. BOX 149  
ATTICA, N.Y. 14011-0149

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Attica Correctional Facility  
Office of the Superintendent

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MEMORANDUM

TO: Elder, J 09B0562 B19-10  
(NAME) (DIN) (CELL)

FROM: Mark L. Bradt, Superintendent MLB

RE: Discretionary Review

DATE: 9-26-12

As requested, a Discretionary Review was completed on your Tier III Hearing which was done on 9-21-12.

After review, I find no reason to modify the disposition rendered.

MLB/lb

c: Guidance Unit  
Inmate Records  
File (2)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JARVIS ELDER, 09B0562

Plaintiff

-v-

\_\_\_\_\_-CV-\_\_\_\_\_

J.McCARTHY, Sergeant  
T.MACINTYRE, C.O/E.A.  
KEN.KLING, Voc. Suprv./H.O  
MARK L. BRADT, Superintendant  
ABLERT PRACK, Dir. Special housing  
Defendant

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Application For Order Directing Services By U.S Marshal

I JARVIS ELDER, plaintiff in the above action, hereby request an order of the court the U.S. Marshal for the Western District of New York, pursuant to Fed, Civ.P. 4(c)(2), to serve the summons and complaint in this action.

Jarvis Elder 09B0562  
Signature of Plaintiff

Date: 4/24/14

AFFIDAVIT OF SERVICE

STATE OF NEW YORK           )  
  ) ss. :  
COUNTY OF WASHINGTON    )

I, JARVIS EIDER, being duly sworn, depose and say  
that on the 24 day of April, 2014,  
Petitioner/Defendant/Plaintiff Claimant, served upon the defendant/  
respondent the annexed document(s) identified as:  
civil cover sheet, motion approved in IFP,  
supporting Affidavit, Authorization, EXHIBITS, upon the following party:  
complaint, services by U.S. marshal

Office of The Clerk  
2120 United States Courthouse  
100 State Street  
Rochester, New York 14614-1387

by placing the same in the mailbox at the Great Meadow Correctional  
Facility, under the exclusive care and custody of the United  
States Postal Service, by regular first class mail/certified  
return receipt mail/ other.

James M. Terrio 0960562

Sworn to before me this

24 day of April, 2014.

James M. Terrio  
NOTARY PUBLIC

**JAMES M. TERRIO**  
Notary Public • State of New York  
No. 01TE0217805  
Qualified in Washington County  
My Commission Expires February 22, 2018